

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

MARK ANTHONY BATES,  
v.  
KEN CLARK, Warden

Civil No. 07cv0330 H (BLM)

**ORDER DISMISSING CASE  
WITHOUT PREJUDICE AND WITH  
LEAVE TO AMEND**

Petitioner, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

## **FAILURE TO MEET THE FILING FEE REQUIREMENT**

Petitioner has failed to pay the \$5.00 filing fee and has failed to move to proceed in forma pauperis. Because this Court cannot proceed until Petitioner has either paid the \$5.00 filing fee or qualified to proceed in forma pauperis, the Court **DISMISSES** the case without prejudice. See Rule 3(a), 28 U.S.C. foll. § 2254. If Petitioner wishes to proceed with this case, he must submit, **no later than April 27, 2007**, a copy of this Order with the \$5.00 fee or with adequate proof of his inability to pay the fee. **For Petitioner's convenience, a blank motion to proceed in forma pauperis is attached to this Order.**

## **FAILURE TO NAME A PROPER RESPONDENT**

Review of the Petition reveals that Petitioner has failed to name a proper respondent. On federal habeas, a state prisoner must name the state officer having custody of him as the

1 respondent. *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule 2(a), 28  
2 U.S.C. foll. § 2254). “The ‘state officer having custody’ may be ‘either the warden of the  
3 institution in which the petitioner is incarcerated . . . or the chief officer in charge of state  
4 penal institutions.’” *Id.* (quoting Rule 2(a), 28 U.S.C. foll. § 2254 advisory committee’s  
5 note).

6 Here, Petitioner incorrectly named “Ken Clark” as Respondent. In order for this  
7 Court to entertain the Petition filed in this action, Petitioner must name the warden *currently*  
8 in charge of the state correctional facility in which Petitioner is presently confined or the  
9 Director of the California Department of Corrections. *Brittingham v. United States*, 982 F.2d  
10 378, 379 (9th Cir. 1992) (per curiam).

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12 **IT IS SO ORDERED.**

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14 DATED: March 6, 2007

  
15 MARILYN L. HUFF, District Judge  
16 UNITED STATES DISTRICT COURT

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